as in the cases to which Mr. Stabb referred such as *Davies* v. *Otty* [5] and *Symes* v. *Hughes* [6], to which might be added *Petherpermal Chetty* v. *Muniandy Servai* [7] where the subject was fully considered by their Lordships' Board. But where the fraudulent purpose has actually been effected by means of the colourable transfer, there is no room for repentance. The father has used the transfer to achieve his deceitful end and cannot go back on it. He cannot use the process of the Courts to get the best of both worlds — to achieve his fraudulent purpose and also to get his property back. The Courts will say: "Let the estate lie where it falls," see *Sajan Singh* v. *Sardara Ali* [8] and *Kiriri Cotton Co. Ltd.* v. *Dewani* [9] at pages 202-3.

Their Lordships notice that the trial Judge (Smith J.) in this case was also the trial Judge in *Sajan Singh* v. *Sardara Ali, supra.* In that case he had applied the maxim *"ex turpi causa non oritur actio"*: but having been over-ruled by the Court of Appeal, he felt that in the present case he ought not to apply the maxim. He said: "In view, however, of the Court of Appeal decision in *Sardara Ali* v. *Sarjan Singh* [10], it appears that the plaintiff's possible turpitude is no reason for denying him the orders which he seeks." The difference, however, is this: In *Sardara Ali* v. *Sarjan Singh* the plaintiff founded his claim on his right of property in the lorry and his possession of it. He did not have to found his cause of action on an immoral or illegal act. He was held entitled to recover. But in the present case the father has of necessity to put forward, and indeed, assert, his own fraudulent purpose, which he has fully achieved. He is met therefore by the principle stated long ago by Lord Mansfield, "No court will lend its aid to a man who founds his cause of action upon an immoral or an illegal act," see *Holman* v. *Johnson* [11] at page 343. Their Lordships are of opinion that the Courts should not lend their aid to the father to obtain a re-transfer from the son.

Their Lordships will therefore report to the Head of the Federation as their opinion that the appeal should be allowed and the orders of the Court of Appeal and the High Court set aside. The claim of the respondent (the plaintiff in the action) should be dismissed. The counterclaim should also be dismissed. The respondent should pay the costs before their Lordships and in the Court of Appeal from the date of the additional grounds of appeal of 11th November, 1958, but there should be no order as to the costs before that date.

Appeal allowed.

Solicitors: *Graham Page & Co.; Lawrence, Messer & Co.*

LEE CHING POH v. CHING KEE SUN & ORS., TRUSTEES OF YEUNG CHING SCHOOL

[A.C.J. (Ambrose J.) February 3, 1962]

[Singapore — District Court Appeal No. 31 of 1961]

Landlord and Tenant — Claim for possession — Whether reasonable — Alternative accommodation — Whether suitable — District Judge calling for Certificate of City Architect despite objection by counsel — Whether production of certificate may be imposed as a condition under s.18 of the Control of Rent Ordinance (Cap. 242).

Evidence — Calling of witness in civil action — Additional evidence in the form of Architect's certificate.

This was an appeal from a judgment of the District Court giving the respondents possession of the front portion of the 1st floor of No. 72 Club Street, Singapore. The main grounds of appeal were that the District Judge was wrong in law in holding that it was reasonable for the respondents to require possession; and that he was wrong in law and in fact in holding that the alternative accommodation offered was suitable.

Held: (1) it was reasonable in this case for the respondents to require possession;

(2) a Judge has no power to call a witness in a civil action without the consent of both parties; to call for additional evidence in the form of a certificate by the City Architect is virtually the same as calling him as a witness;

(3) the District Judge has no power under section 18 of the Control of Rent Ordinance to impose a condition on the respondents which would in effect amount to calling for additional evidence without the consent of both parties;

(4) there was sufficient evidence to justify the finding that the alternative accommodation was suitable.

Case referred to:—

(1) *In re Enoch and Zaretsky, Bock & Co.'s Arbitration,* [1910] 1 K.B. 327.

DISTRICT COURT APPEAL.

N. N. Leicester for the appellant.

Tan Peng Khoo for the respondents.

Cur. Adv. Vult.

Ambrose J.: This is an appeal by the defendant from a judgment of the District Court giving the plaintiffs possession of the front portion of the first floor of a house known as No. 72 Club Street, Singapore, under section 15(1)(*l*) of the Control of Rent Ordinance.

This provision of the Ordinance empowers the Court to give judgment for possession "where the court considers it reasonable that such..... judgment be ..... given and is satisfied that suitable alternative accommodation is available for the tenant ....."

The learned District Judge found that it was reasonable that an order should be made giving the plaintiffs possession of the premises. He said:

"On the evidence before me I came to the conclusion that it was eminently reasonable for the plaintiffs to require possession. They require possession to complete the building programme of the school to provide an

assembly hall and a canteen. There are at present about 3,000 students in the school and it is hoped to increase this to 6,000 students. I think it is not only reasonable but essential that a school of that size should have proper facilities.

The other tenants in the premises occupied by the defendant and in the adjoining premises 73 Club Street had all moved away."

It is submitted by counsel for the appellant that the District Judge was wrong in law in holding that it was reasonable for the plaintiffs to require possession. It is said that section 15(1)(*k*) of the Ordinance has been suspended by the Control of Rent (Amendment) Ordinance, 1961; and that as an order for possession could not be made under section 15(1)(*k*) it could not be made under section 15(1)(*l*). I find no substance in this argument, as possession is not claimed in the present case on the ground that demolition of the premises in question is necessary in the interests of public health or town improvement.

The District Judge also found that suitable alternative accommodation was available for the tenant. He said:

"I inspected both the present accommodation of the defendant and the accommodation offered to him with counsel. In my view the accommodation offered was preferable to the present accommodation of the defendant. It had, as Mr. Wong Foo Nam said in his evidence, better ventilation and lighting.

Mr. Leicester's chief complaint appeared to be that there was insufficient provision of lavatories, bathroom and kitchen. It certainly was not ideal but I did not see how it was any worse than the defendant's present accommodation where he had shared the one lavatory with all the families living on the premises and the kitchen and bathroom with another tenant on his floor."

It is submitted by counsel for the appellant that the District Judge was wrong in law and in fact in holding that the alternative accommodation offered was suitable. He referred to the following passage in the District Judge's grounds of decision:

"There was one point, however, on which I needed reassurance and that was whether the alternative accommodation was safe for the defendant to occupy. Mr. Wong, a qualified architect himself, had given evidence that the building was safe but I decided to act under section 18 of the Ordinance and indicated to counsel for the plaintiffs that I would make an order for possession on the condition that the plaintiffs produced a certificate from the competent authorities to say that the building was safe.

At the continued hearing Mr. Leicester objected to the certificate being produced although he conceded that I could have made an order for possession subject to the certificate being produced. I could not see the difference between that and the method I had adopted and ruled that the certificate was admissible.

The architect from the Chief Building Surveyor's Department gave evidence at the next hearing and said the building was structurally sound and fit for human habitation."

Counsel for the appellant contends that the District Judge erred in law in calling for a certificate from the City Architect certifying that the alternative accommodation was safe, in spite of counsel's objection to this procedure. I accept counsel's contention. A Judge has no power to call a witness in a civil action without the consent of both parties: see *In re Enoch and Zaretsky, Bock & Co.'s Arbitration* [1]. To call for additional evidence in the form of a certificate by the City Architect is, in my opinion, virtually the same as calling him as a witness. It seems to me, therefore, that the District Judge had no power to do so without the consent of both parties. I would concede that it was open to the District Judge to indicate to the plaintiffs the desirability of their calling the City Architect, or an architect from his department, to give evidence on their behalf as regards the safety of the alternative accommodation. But such an indication would have had to be given as early as possible to enable the plaintiffs to call the architect before they closed their case.

The District Judge thought that section 18 of the Ordinance empowered him to call for the additional evidence required by him. This section empowers the Court to order either party to comply with any conditions which the Court may think fit to impose for giving effect to the purposes of the Ordinance. In my judgment, the District Judge had no power under this section to impose a condition on the plaintiffs which would in effect amount to calling for additional evidence without the consent of both parties.

Counsel for the appellant further contends that the District Judge erred in law in hearing the evidence of the architect from the Chief Building Surveyor's Department on the 13th November, 1961, when the hearing of the action was continued. I accept this contention for the reason stated above.

In my view, the District Judge should have decided the case on the evidence produced by the parties on the 2nd November, 1961. He appears to have been troubled by a doubt as to the safety of the alternative accommodation. This doubt was created in his mind by the production by the defendant of a photograph of the remnants of a notice pasted on the door leading to the alternative accommodation. The translation of the torn notice reads as follows:

"Yeung Ching School
7th April, 1959.
Principal ? ?
It is notified
cannot again
Chin crack
Poh Poh (?) because received extreme."

In my opinion, whatever this torn notice says is hearsay. The defendant did not produce proper evidence to show that the alternative accommodation was not safe at the time of the hearing of the action. Mr. Wong Foo Nam, who is an architect by profession and Chairman of the trustees of the Yeung Ching School, testified that the alternative accommodation was dangerous when earth was being removed from the building site, but that it was not dangerous at the time of the hearing of the action.

In my judgment, the District Judge should have been satisfied, on the evidence produced by the parties, that it was more probable than not that the alternative accommodation was safe. As he did not dismiss the plaintiffs' claim, it is reasonable to infer that he was in fact so satisfied. He appears, however, by acting on his interpretation of his powers under section 18 of the Ordinance, to have subjected the plaintiffs to the burden of proving their case beyond reasonable doubt, which is more onerous than the burden imposed by law on the plaintiff in a civil case. Furthermore, the course he took was open to the objection that it gave an unfair advantage to a defendant who had failed to produce proper evidence that the alternative accommodation was not safe.

In my view, there is no substance in the contention that the District Judge was wrong in fact in holding that the alternative accommodation was suitable. It is true that he erred in law by calling for a certificate from the City Architect and hearing the evidence of an architect from his department. But if the certificate and evidence of the architect are excluded, there was sufficient evidence to justify the decision that the alternative accommodation was suitable.

The contention that it was wrong in law for the District Judge to hold that the alternative accommodation was suitable is based on certain evidence given by the architect from the Chief Building Surveyor's Department. As the whole of the evidence given by this witness has to be disregarded for the reason given above, this contention falls to the ground.

The result is that the judgment of the District Court is upheld and the appeal is dismissed; and the defendant is ordered to pay the plaintiffs' costs here and in the Court below.

Appeal dismissed.

Solicitors: *Leicester & Chen; Oehlers & Choa.*

KANNAPPA CHETTIAR v. SCULLY & ANOR.

[O.C.J. (Hepworth J.) February 9, 1962]

[Penang — Civil Suit No. 25 of 1961]

Money and Moneylending — New promissory note — Whether renewal of old promissory note — Whether cash or cheque must be handed over to constitute loan — Non-delivery of copies of promissory notes to defendant — Whether enforceable — Moneylenders Ordinance, 1951, s.16.

The plaintiff, a licensed moneylender, claimed against the defendants jointly and severally as makers of three promissory notes the principal sums of $1,200 together with interest thereon from April 28, 1955 at the rate of 18% less the sum of $70 which had already been paid by the defendants. The defendants' main defence was that no money passed but that the three promissory notes were renewals of old promissory notes in respect of money lent in 1952 and that as no copies of the said promissory notes were delivered to the defendants, the plaintiff's claim was unenforceable by virtue of section 16(1) of the Moneylenders Ordinance, 1951.

Held: a loan is made though no cash or cheque is handed to the borrower, provided the money expressed to be lent is appropriated by the moneylender as authorised by the borrower even if this amounts to the renewal of the previous loan. A transaction wiping off an old loan by treating it as a new loan on altered terms must be shown on the face of it to comply with section 16(4) of the Moneylenders Ordinance, 1951.

Cases referred to:—

(1) *Chethambaram Chettiar* v. *Loo Thon Poo*, [1940] M.L.J. 31; [1940] M.L.J. Rep. 25.
(2) *B.S. Lyle Ltd.* v. *Chappell*, [1932] 1 K.B. 691.
(3) *Dunn Trust Ltd.* v. *Teale* (1928), Leeds Assizes (unreported).

CIVIL SUIT.

Triptipal Singh for the plaintiff.

Defendants in person.

Cur. Adv. Vult.

Hepworth J.: The plaintiff is a licensed moneylender carrying on business under the firm name of VR. KN. Firm at No. 49, Macalister Road, Penang, and the 1st and 2nd defendants are employees of the City Council Water Department, Penang.

The plaintiff's claim is against the defendants jointly and severally as makers of three promissory notes for the sums of $600, $500 and $100 all payable on demand and all dated the 28th April, 1955. The plaintiff alleges that the defendants have only paid a sum of $70 on account of interest due under such promissory notes and that the whole of the principal and interest at the rate of 18 per centum per annum less the said sum of $70 is still outstanding. The plaintiff's claim is, therefore, for the principal sums referred to above together with interest thereon from the 28th April, 1955, at the rate of 18 per centum per annum less the said sum of $70.

The defendants allege that on the 28th April, 1955, no money passed but that the three promissory notes were renewals of old promissory notes entered into in respect of money which was lent by the plaintiff to the defendants during the year 1952, that no copies of the said promissory notes were delivered to the defendants, and that accordingly the plaintiff's claim is unenforceable by virtue of the provisions of section 16(1) of the Moneylenders Ordinance, 1951.

The plaintiff stated that the 1st defendant was introduced to him by one Shanmugam in 1953. On that occasion the 1st defendant borrowed $120 (the first loan) and the plaintiff alleges that that loan was repaid the same year. A record of the loan and a record of the repayments appear at page 127 of P.2.

On the 5th September, 1953, both the defendants came to see him, the plaintiff said, and asked him to give them a loan. To this he agreed and gave them a loan of $360 (the second loan). A record of this loan appears at page 25 of P.1.

Again on the 6th September, 1953, the plaintiff said the defendants came and borrowed a further sum of $375 (the third loan). A record of this loan appears at page 185 of P.2.